1949

File No. O. Divorce/49

Legal Department

A BRANCH

Subject:—

Opinions under the Bombay Hindu Divorce Act, 1947

(Y) 2/(E)

File No. O. Divorce/49

Gen. 194

(213-A)

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Submitted.

This is a reference from H. & L.G.D., forwarding an application from one Mr. G.N.Patel, seeking to obtain divorce from his wife on the ground that she is suffering from leprosy. He also asks Government to appoint same experience Doctor to examine his wife H.M.(Health) has clearly stated (at p. 1) that Govt. cannot undertake to send doctors to examine such a case etc. The papers are forwarded to this Department by H. & L.G.D., for necessary action . In the circumstances stated by the H. & L. G.D., in its note (at p. 5 ante) it is not understood what necessary action, H. & L.G.D., desires, this department should take in the matter. H.M.(Health) has simply desired to forward the papers to H.M.(Law) The papers may therefore be returned to H. & L.G.D. for submitting the same direct to H.M.(Law) and for informing the applicant according to the instructions of H.M.(Health).

Sd/- V.R.Chitnis.

25-10

A .A.S.

The grounds for divorce and those for judicial separation are specified in sections 3 and 4 respectively of the Bombay Hindu Divorce Act, 1947.Leprosy not contracted from the plaintiff is a ground for divorce as well as for judicial separation (see sec. 3(1)(c) and sec. 4(i)). Section 5 of the Act speaks of the forum where a suit under the Act can be filed. Sec. 7 provides that in any suit under section 3 or 4 whether defended or not, if the Court is satisfied that any of the grounds set forth in either of those sections for granting relief exist, the Court shall

decree such relief accordingly. Sec. 15 provides for custody of children.

The applicant may, therefore, be asked to institute a suit for divorce on the ground of leprosy in the Court within the limits of whose jurisdiction his wife resides at the time of such suit (vide sec. 5(1) of the Bom. H.D. Act, 1947) and to obtain orders of the Court for the custody of his minor son. Government cannot help him in any manner and it would be for him to prove leprosy by medical evidence if necessary. A.

Id/- E.P.B.
26-10

A.L.R.

Replay may be as A-A.

Id/- R.T.K.
27-10

Id/- P.M.L.
27-10
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No. 12189 dated the 31st October 1949.

PSM. 7-6
4C